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May 23, 2003

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2003 MAY 23 PM 3:11

Ms. Carol Mitten, Chair
District of Columbia Zoning Commission
441 4th Street, N.W.
Suite 210
Washington, D.C. 20001

Re: Waterfront PUD ZC No. 02-38; Post Hearing Submission

Dear Ms. Mitten and Members of the Zoning Commission:

In response to the request of the Zoning Commission during its deliberations on the Waterfront PUD application at the May 12th meeting session, the Applicant submits the following additional information and proposals into the record for the Commission's consideration. Attached hereto is a revised blacklined PUD Order incorporating the changes described in this letter.

1. Additional Proposed Condition Regarding Inclusion of a Grocery Store in the PUD

As expressed at the public hearing, the Applicant is fully committed to providing community serving retail space in the project-including a grocery store. The Applicant is of the opinion that this type of retail is highly marketable at this location as well as fully compatible with the mix of office and residential uses to be included in the project.

In its deliberations, the Commission expressed concerns about continued provisions for a grocery store in the project. The Applicant is willing to commit to provide a grocery store with a minimum square footage of 30,000 feet – the size of the existing Safeway store. However, the Applicant notes that Safeway has a remaining 17 year lease on its existing space, and that 17 years from now, it is very likely that the neighborhood may be served by another grocery store at another location outside of the Waterfront PUD boundaries and control. As a result, the applicant proposes the following condition:

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Exhibit 110

So long as the neighborhood, (defined as a 1.5 mile radius from the PUD boundaries), is not served by a grocery store, the Applicant will set aside space for a 30,000 square foot

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EXHIBIT NO.110

minimum size grocery store in the project, as part of the 75,000 minimum PUD retail requirement. The Applicant will use reasonable efforts to lease the space for grocery store use.

2. Specify Term for Applicant's Responsibility to Maintain the Former Federal Land (Located North of the PUD Boundary) as a Public Park Amenity

The Applicant hereby indicates its commitment to maintain this federal parkland for the period of time commencing with the completion of the park portion of the reopened 4th Street, S.W. and extending through the useful life of the PUD project.

3. Second Stage Applications Timetable

The Commission requested that the schedule of second–stage applications, as proposed by the Applicant, be clearly detailed in the conditions section of the proposed PUD Order. The Commission also requested that the schedule be simplified and that the first two, second-stage applications be combined into a single second-stage application.

A consolidation of the first two second stage applications is not practical because of the substantial length of time between the first building (East 4th Street Building – first quarter 2006) and the last building (S.W. Tower –first quarter 2009) included in these phases. The last building, the S.W. Tower, cannot be constructed until the CVS lease expires on 12/31/08. Combining the phases would necessitate that this building be designed in 2004, a full 4-5 years before the building can be constructed, and therefore marketed and preleased.

As indicated previously, the large size of the PUD project, preexisting leasing constraints, and the realities of pre-leasing requirements, dictate the need for the multiple second-stage PUD submissions and the proposed PUD submissions and development timetable previously submitted. We urge the Commission to consider the attached timeline which we have attempted to clarify for the Commission's review as well as the attached memorandum which explains the rationale for the timetable. We ask that the Commission approve the revised language setting forth the Applicant's proposed schedule for the three second-stage PUD applications.

4. Sequencing of Residential and Commercial Components

Finally, the Commission expressed some concerns about the complexity of the proposed condition relative to the sequencing of the project residential and commercial components. The Commission also questioned its enforceability in the context of a first-stage PUD order.

First, regarding the complexity of the condition as previously expressed, we have condensed the requirements, without changing their substance, into the following proposed substitute condition:

> After 1.6 million square feet of a new and renovated office and retail space has been developed, the Applicant shall present a C of O for at least 200,000 square feet of residential space, prior to obtaining a C of O for up to 250,000 square feet of office space, greater than 1.6 million. The Applicant shall present a C of O for all remaining residential space (400,000 square feet total) prior to obtaining a C of O for any additional office space greater than 1.85 million.

Second, regarding the enforceability issue, it was suggested that the aforementioned sequencing condition for the residential and office components should be reserved for the second-stage. We agree that this condition should be incorporated into the pertinent second-stage orders, but we believe that it must also be clearly expressed in the first-stage order as a guideline applicable to the subsequent second-stage applications. The sequencing of the residential and commercial components is an important aspect of the PUD which was carefully negotiated between OP and the Applicant and, as such, should not be left open to renegotiation or interpretation in subsequent second-stage applications.

As a result, we have amended our proposed order, attached hereto, to include the sequencing arrangement as both a finding of fact and a guideline for incorporation in the second and third, second-stage PUD applications. The proposed sequencing, which is based upon attaining 1.6 million square feet of commercial space before the residential requirement becomes operative, does not come into play until the second and third, second-stage applications.

The Applicant recognizes the importance of this project to the Commission in terms of providing community serving retail and service uses, a town center focus, and construction and long term job opportunities. The Applicant will work with the District and the community to maximize these benefits.

Thank you for your consideration of these additional materials.

Sincerely,

Cynthia Giordano

cc: Ellen McCarthy, Office of Planning
ANC-6D (via email and fax to Edward Johnson)

DECISION

In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission orders **APPROVAL** of the Applications for first-stage review of a Planned Unit Development and for a Zoning Map amendment from C-3-B to C-3-C for indicated parts of the property located at 401 M Street, S.W., specifically Lot 60 in Square 499 and Lot 88 in Square 542. This approval is subject to the following guidelines, conditions and standards:

1. The final design of PUD shall be developed in accordance with the site plan and preliminary architectural and landscape plans submitted as Exhibits ____ in the record of this case, and as modified by the guidelines, conditions and standards of this order.

2. The project shall be developed with office, residential and retail uses, together with public spaces, generally as depicted in the preliminary plans submitted in this first-stage application. A minimum of 75,000 square feet of retail space shall be included in the project.

3. The maximum building height in the project shall be 112 feet and the maximum aggregate gross floor area shall be 4.33, comprised of 3.64 FAR devoted to office and retail uses and 0.69 FAR devoted to residential apartments. Not less than 1,335 parking spaces shall be provided.

4. The four corners of the PUD Site shall be zoned C-3-C, encompassing a land area of 222,429 square feet as depicted in Sheet 20 of Exhibit ___of the record. This area is between the eastern and western boundaries of the PUD Site to a distance of 245 feet from the southern boundary along M Street (305 feet from the centerline of the street), and to a distance of 250 feet from the northern boundary.

5. The Applicant is authorized to proceed with matter-of-right phases of this multi-phase project for those buildings that comply with the height, bulk and use provisions of the existing C-3-B District, as set forth generally above under Finding of Fact Number 26 (a).

6. The remaining phases of development may be processed in three, distinct second-stage PUD applications. The three second-stage applications shall include the following building components and shall be submitted in accordance with the following schedule:

   (a) The first second stage application (hereinafter the "Second-Stage Application No. 1") shall include the East and West Fourth Street Buildings. It shall be submitted after the design and construction of Fourth Street within approximately three years after the effective date of this first-stage approval order.

   (b) The second, second-stage application (hereinafter the "Second-Stage Application No. 2") shall include the Northwest and Southwest Towers. It

shall be submitted to the Zoning Commission by the Applicant within five years after the effective date of this first-stage approval order.

(c) The third, second-stage application (hereinafter "Second-Stage Application No. 3") shall include the Southeast and Northeast Towers. It shall be submitted to the Zoning Commission by the Applicant within 17 years after the effective date of this first-stage approval order.

The Applicant shall submit with each second-stage application detailed plans and elevations indicating the design treatment of the proposed PUD project, including but not limited to building and landscape materials, color, architectural and landscape details, and zoning data as required for a second-stage PUD application.

7. The Second-Stage Application Nos. 2 and 3 shall be consistent with the following condition which will regulate the sequencing of the PUD commercial and residential components in a manner which ensures that the residential space is developed prior to the completion of all of the approved commercial components:

> After 1.6 million square feet of new and renovated office and retail space has been developed, the Applicant shall present a C of O for at least 200,000 square feet of residential space, prior to obtaining a C or O for up to 250,000 square feet of office space, greater than 1.6 million square feet. The Applicant shall present a C of O for all remaining residential space (400,000 square feet total) prior to obtaining a C of O for any additional office space greater than 1.85 million square feet.

8. The residential portion of the project shall have a direct pedestrian connection to the reopened 4th Street.

9. The project shall designate a minimum of 75,000 square feet of gross floor area for retail and service uses. Such floor area shall be located at the ground floor level along the entirety of the M Street frontage and on both sides of the reopened 4th Street from M Street to the northern property boundary, as generally depicted in the revised Sheet 15 of the PUD plans dated January 22, 2003. As part of the 75,000 square foot requirement, so long as the neighborhood, (defined as 1.5 mile radius from the PUD boundaries), is not served by a grocery store, the Applicant will set aside space for 30,000 square foot minimum size grocery store in the project. The Applicant will use reasonable efforts to lease the space for grocery store use.

10. The Applicant shall construct a 25,000-square-foot landscaped public plaza around the escalator of the Metrorail station.

11. The Applicant shall assume the responsibility to maintain the former federal land north of the PUD boundary (Square 499, Lot 57) as a public park amenity that remains after construction of the reopened 4th Street, S.W. The Applicant's

obligation to maintain this parkland shall begin with the opening of 4th Street through the park site and continue for the useful life of the PUD project.

12. Second-stage PUD applications shall reflect traffic mitigation measures recommended in the "4th Street SW Transportation Study" prepared by the District of Columbia Department of Transportation by DMJM+Harris, Inc., dated January 2003.

13. The Applicant shall execute the following agreements prior to the adoption of the final Zoning Commission order of the first second-state PUD in this case:

    (a) A First-Source Employment Agreement with the Department of Employment Services; and

    (b) A Memorandum of Understanding with the District of Columbia Office of Local Business Development ("LSDBE") to ensure minority vendor participation.

14. This first-stage PUD approval by the Zoning Commission shall be valid for a period of three (3) years from the effective date of this order. Within such time, the applicant shall file a second-stage PUD application in order for this first-stage application to remain in effect.

15. Pursuant to D.C. Code § 1-2531 (1991), Section 267 of D.C. Law 2-38, the Human Rights Act of 1977, the applicant is required to comply fully with the provisions of D.C. Law 2-38, as amended, codified at D.C. Code, Title 1, Chapter 25 (1991). Nothing in this order shall be understood to require the Zoning Regulations Division of the Department of Consumer and Regulatory Affairs to approve permits if the applicant fails to comply with any provision of D.C. Law 2-38, as amended.

Vote of the Zoning Commission taken at its public hearing of this case on [ ], 200, by a vote of [ ].

In accordance with the provisions of 11 DCMR 3028, this order shall become final and effective upon publication in the D.C. Register, that is, on _____.

CAROL J. MITTEN
Chairman
Zoning Commission

JERRILY R. KRESS, FAIA
Director
Office of Zoning

ARNOLD & PORTER

Memorandum

To: Zoning Commission Members

From: Cynthia A. Giordano

Date: March 20, 2003

Re: Waterfront PUD; Follow-Up Summary of Phasing, Second-Stage Application Schedule; Additional Response to Questions Regarding Applicant Commitment to Retail Component

The following is a summary of the Applicant's proposal for the extended build-out and phasing of the Waterfront PUD project including requested flexibility from the typical two-stage PUD process. Also included is a brief response to questions raised by the Commission as to the Applicant's intentions with respect to the project retail component.

PUD PHASING SCHEDULE

The applicant is requesting flexibility to file multiple second-stage applications and to obtain a first-stage approval which will be valid for a period of at least three years and will fully vest upon the filing of the first of the multiple second-stage applications.

Typically, a PUD project entails a first-stage application followed by a single stage-two application. Also typically, a first-stage approval is valid for a period of one year prior to expiration. A second-stage application must be filed prior to such expiration or the first-stage approval will lapse. However, Section 2407.10 of the Zoning Regulations provides that the Commission may specify that a first-stage approval shall be valid for a longer period than one year. For the reasons set forth below, the Waterfront

PUD will require at least three second-stage applications and the first-stage approval will need to be valid for at least three years.

Overall Rationale for Flexibility Requested

Multiple second-stage applications and an extended first-stage approval are necessary due to the large size of the project and the substantial office component, which cannot be built-out on a speculative basis and which will require a longer time to prelease than a typical 100,00 – 200,00 square foot office PUD project. Further, the design and construction of 4th Street through the site will have to precede the design and development of the buildings which front on it. Finally, portions of the existing improvements (i.e. the existing Safeway and CVS stores) are encumbered by long-term leases which effectively preclude redevelopment until many years hence. For all of these reasons, the Applicant will not be in a position to commence with the design of the buildings in later development phases until these buildings can be marketed, leased, and/or developed.

Multiple Stage-Two Applications

As indicated above, the Applicant envisions that a total of three second-stage PUD applications will be required. As a first phase of development the Applicant will complete several matter-of-right renovation projects, one of which will also entail the construction of one additional floor on an existing building (within matter-of-right height standards). These projects will not require second-stage PUD review or approval. Most of them are interim projects which will be razed and replaced with new buildings which will require stage-two PUD review. The following is a description of the three stage-two applications envisioned by the Applicant.

The first, two-stage application will consist of the redevelopment of two new buildings which will flank 4th Street (i.e. the "East 4th Street and "West 4th Street Buildings"). These buildings cannot be fully designed until the design of 4th Street is completed and they cannot be constructed until 4th Street is substantially under construction or completed. As a result, the Applicant does not anticipate being in a position to file a second-stage application for these buildings until approximately three years from the first stage approval.

The second, stage-two application will include two buildings (1): a new residential building(s) located in the Northwest corner of the site ("N.W. Building(s)"), (2) and a new office building located on the Southwest corner of the site, fronting on M Street ("S.W. Building"). The applicant will not be required to build the N.W. Building(s), until 1.6 million square feet office space is developed. The economics of project also dictate that the residential component cannot be constructed until this amount of new office space is provided. With respect to the S.W. Building on M Street, this building will replace an existing building which is leased to CVS until 2008. Therefore, it cannot be developed until the expiration of CVS's lease. The Applicant anticipates that it will be ready to design these new buildings and file a second-stage application for them within approximately five years after the first stage approval.

The final, and third, stage-two application will include a new office building located on the northeast corner of the site (the "N.E. Building") and a new office building located on the southeast corner of the site fronting on M Street (the "S.E. Building"). The N.E. Building entails the demolition of an office building which was renovated and expanded with an additional floor, as a matter-of-right, in the first phase of the

development program. The redevelopment of this site is therefore reserved for the last development phase, after the renovated building has served a useful life. The S.E. Building cannot proceed until a later phase because it entails the demolition and redevelopment of a building which is subject to a twenty-year lease held by Safeway. The applicant anticipates that this final, second-stage application will be filed approximately 17 years from the first-stage approval.

Extended Validity of First-Stage Approval

In addition to requiring multiple stage-two applications, the Applicant will also need the first-stage approval to be valid for a period of at least three years – the amount of time that the Applicant estimates will be required to complete the design work and funding agreement for 4th Street. Further, in order to ensure that the first-stage approval does not lapse with respect to the project components that will be the subject of the second and third stage-two PUD applications (which will not be filed until 5-17 years subsequent to the first-stage approval), the first-stage approval should state that it fully vests upon the filing of the first stage-two application.

Summary Timeline for Submission of Stage Two PUD Applications

The following timeline indicates in summary form when each of the PUD components will be processed:

> **Year 2006**: submission of stage-two PUD for East and West 4th Street Buildings.
>
> **Year 2008**: submission of stage-two for N.W. Tower (residential building) and S.W. Tower.
>
> **Year 2020**: submission of stage-two PUD for N.E. Tower and S.E. Tower.

It is our goal to commence construction on all of the aforementioned buildings as soon as the applicable stage-two PUD applications are approved and building permits are issued.

CLARIFICATION WITH RESPECT TO APPLICANTS' INTENTIONS REGARDING RETAIL COMPONENT

The applicant is committed to community/lifestyle based retail on the ground floor of this project. Our marketing studies indicate that we can achieve a vibrant retail environment along the reopened 4th Street including a grocery store.

Waterfront Time Line
Based on Best Estimate Leasing Schedule
Submitted to Zoning Commission 4/7/2003

